OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 98-6

April 29, 1998

TO: Regional Directors, Division Heads, NLRBU NLRBPA

FROM: Fred Feinstein Acting General Counsel

I am pleased to provide you with a copy of Change and Challenge at the National Labor Relations Board: A Report on Operational Initiatives by General Counsel Fred Feinstein 1994 - 1998. I hope you will find it informative.

As I stated in the introduction to the Report, it is the career staff of the Agency who truly deserves the credit for developing and implementing the summarized initiatives. I am especially grateful to those who have served on the numerous committees, task forces and work groups whose efforts are reflected in the Report, or who otherwise contributed to improving the NLRB's service to the public during these challenging times.

F.F.

Attachment

Change and Challenge at the National Labor Relations Board

A Report on Operational Initiatives

by General Counsel Fred Feinstein

1994 – 1998

National Labor Relations Board
Office of the General Counsel

April 1998

Contents

Change and Challenge at the National Labor Relations Board

A Report on Operational Initiatives by General Counsel Fred Feinstein 1994 – 1998

Executive Summary

Case Handling Programs

• **Impact Analysis:** Cases now receive attention consistent with their importance to the public. Prior to the implementation of Impact Analysis cases were treated on a first come, first served basis. Cases are now classified at initial intake in accord with their impact on the public and thereafter resources and the time frame for the investigation are allotted in accord with the categorization of the case. Impact Analysis has encouraged the use of alternative investigative techniques which ensure quality while saving Agency time

and resources. This effort received a Hammer Award in 1997.

• **R case reinvention program:** Regional Office practices were examined to identify ways to conduct representation elections in a more consistent and predictable time frame. Goals were established to put all parties on notice of precisely what would occur when a petition for an election was filed, to conduct the election within a predictable number of days from the filing of a petition and to resolve all post election issues expeditiously. In more than 50% of all cases, elections are now held within 42 days of petition filing and in nearly nine of ten cases elections are held within 56 days. This effort received a Hammer Award in 1997.

• **10(j) Program:** The goal has been to promote uniform application of NLRA injunction provisions. A manual was produced and distributed to all field offices; training was conducted, with subsequent refresher sessions. Each Region named a 10(j) coordinator. Cases are now reviewed for 10(j) potential early in investigation. An initial upsurge in 10(j) filings has leveled off. Despite changes, the success rate in terms of settlements and litigated cases has remained unchanged from historical levels.

• **Compliance Program Review:** Regional Office procedures for computing, collecting backpay and obtaining other remedies were reviewed. Guidance was produced, updated; Regions may now use sampling, estimating techniques to simplify backpay computation. Compliance cases now prioritized under Impact Analysis principles.

• **Office of Appeals Reinvention:** The Office of Appeals, which reviews Regional Office dismissals of unfair labor practice charges for potential prosecutorial merit, has been streamlined to reduce layers of review. Work processes were reorganized to more quickly identify and process potential merit cases. Highest priority cases now receive first attention. Case processing times have been reduced, improving service to public. This effort received a Hammer Award in 1997.

• **Other Programs:** Alternative Dispute Resolution agreement to reduce charge filings involving Postal Service; deferral of "collection cases;" transfer of "portable" work; delegations; paperwork reduction;

fostering "best practices" approach; filing and service rules revisions; "calendar call" trial scheduling.

Other Cost-Saving and Efficiency Initiatives

• **Closing and Reconfiguring Field and Headquarters Offices:** The El Paso, Texas Resident Office was closed and the D.C. Resident Office was moved into the Headquarters building. Space in 28 field locations was reduced. The 1998-99 planned reductions include 10 regional offices and Headquarters. The current year-end space assignment is expected to be more than 10 percent below the 1994 level—a saving of $2.25 million.

• **Streamlining of supervision:** In the Regional Offices and in the General Counsel's Headquarters divisions layers of review have been reduced, decisionmaking has been delegated to the lowest practicable level, and there has been greater utilization of supervisory staff flexibly to perform direct casehandling. The ratio of line employees to supervisors has increased. Field office supervisory positions have been reduced 20 percent.

• **Reduction of investigative travel costs:** Parties who file ULP charges and are situated within a 120-mile radius of a field office are required to come to that office to provide their evidence. Use of affidavits taken by telephone and questionnaires or requests for statements of facts have been increased. Cases are clustered so that multiple cases can be handled on a single trip.

• **Use of resident agents working out of their homes** in cities where there is no field office but where there is steady casehandling activity.

• **Streamlining Oversight and Administrative Service to Regional Offices** by downsizing, promotion of consultative management, combining of branches, reduction of internal regulations, elimination of duplicated functions.

• **Other Programs:** Financial management improvement; reduction of interpreter costs; reductions in equipment, supplies

Internal Labor-Management Relations and Other Personnel Initiatives

- **Partnership Formation** to structure participation of unions and other employee representatives in reinvention projects
- **Improved Consultation with Management**
- **Support Staff Issues** to promote career mobility
- **Flexible Workplace** to promote family-friendly goals
- **Revival of Newsletter** for Improved Communications
- **Coordination of Labor Relations**
- **Alternative Dispute Resolution** to save internal litigation costs.
- **Buyouts/Early outs** to meet reduced staffing targets without unnecessary dislocations.
- **Performance Appraisal Streamlining** to save supervisory resources.

Increasing the Use of Information Technology (IT) to Facilitate Casehandling and Management

Introduction

My four-year term as General Counsel ended on March 3, 1998. While I have declined to seek renomination, I am currently serving as Acting General Counsel until a new General Counsel is confirmed. It is an appropriate time to compile and summarize the initiatives that have occurred in the NLRB's Office of the General Counsel during the four years of my term.

The Office of the General Counsel, which employs more than 90 percent of the NLRB's staff, is different today than it was four years ago. Consistent with the principles of the Vice President's National Performance Review, there have been administrative case processing reforms, restructuring of both field and headquarters operations, and streamlining of supervision and work processes, as well as many other changes outlined in this Report. The changes have enhanced the General Counsel's ability to enforce the Act and they have also resulted in cost reductions.

However, because the funding for the Agency has been reduced in real dollars 10.6 percent since fiscal 1993,

while case intake has held steady, backlogs in the field have continued to grow. Without the changes we have made, the backlog would have grown even more. Because of significant operational reforms we have been better able to manage the backlog and have streamlined our ability to carry out the mission of the Agency. Nevertheless, the growing backlog, which causes the delayed resolution of labor disputes, is a significant concern.

In regard to improving the effectiveness of the Office of the General Counsel's law enforcement efforts, from the outset of my tenure we have undertaken to improve our capacity to prioritize the different aspects of the work of the General Counsel's office. Our improved ability to differentiate among cases has helped not only to move more quickly on cases with the broadest public impact, but has also helped to streamline investigative techniques on appropriate cases.

Also from the outset we have focused on all aspects of processing election cases. The Agency has no more important responsibility than conducting elections to determine whether or not employees seek union representation and doing so in a manner that is fair and consistent. Another initial focus was on uniform implementation of the important injunctive provisions of the Act. Significant additional changes have included reforms to help improve our compliance efforts, reinvention of the Office of Appeals and implementation of reforms in a number of other discrete areas that are described in this report.

In addition to these initiatives aimed at improving enforcement efforts there have been numerous steps taken to reduce costs. These efforts have included streamlining supervision and field oversight, the reinvention of headquarters branches, reconfiguring offices, space reductions, cutbacks in travel, and significant other initiatives outlined in this report. These efforts have saved the Agency many millions of dollars.

A number of initiatives have been undertaken to improve internal labor management relations. This has been particularly important given the eight percent reduction in staff the Agency has undergone during the past four years at a time when our case load was holding steady in size and complexity. Staff has been asked to do more and they have responded, but the staff reductions have gone well beyond

the point that added productivity can cover. The average intake per FTE in 1996 was more than fifty percent above the figure for 1962. There is significant concern about the effect on staff morale of the growing case backlogs.

Within weeks of the start of my tenure, we successfully established a partnership relationship with the Agency's unions. We believe this process of partnership with our unions has been important in the development of the many reform initiatives and has helped in dealing with a wide range of difficult labor management issues. We have implemented flexible workplace arrangements and support staff reforms, streamlined the appraisal process and implemented other initiatives to update and improve our staff relations which are described below. Here as in each of the other areas described in this report we recognize that there is still much work to be done.

Finally we have made major strides in the automation of all work processes. We are implementing a new and significantly improved universal case tracking system. In-house legal research databases are replacing commercial services; litigation support software has improved the efficiency of brief writing and decision writing. We have reorganized our information management infrastructure to reflect the significantly increased role that computers now play in all aspects of agency operations. These ongoing efforts have and will continue to increase efficiency and productivity.

From many years of experience in dealing with the Agency before I arrived at the NLRB, I knew that the Agency was comprised of a dedicated, experienced and well managed workforce. It is for that reason that I have been confident in relying on the career staff to analyze and develop each and every initiative that has been implemented. To the extent that we have succeeded the career staff truly deserves the credit. Time and again they demonstrated commitment, energy, insight and a willingness to work hard toward carrying out the Agency's mission to effectively and efficiently enforce the law.

The many reforms in the Office of the General Counsel over the past four years have strengthened the Agency. The three initiatives that were nominated (Impact Analysis, R-case reform and the reinvention of Appeals) were all selected by the NPR to receive Hammer Awards. The changes have enabled us to make progress in improving the

enforcement of the Act as well as coping with declining resources. They have built upon the traditions of the Agency's Office of the General Counsel that have for many years encouraged innovation and change directed at continued improvement in carrying out the Agency's mission to enforce important workplace rights.

The process of change continues. Some of the initiatives described below are still being implemented. Those that have been implemented are being evaluated and assessed. Much remains to be done and new challenges are constantly arising. As in the past, the Office of the General Counsel remains ready to meet new challenges, to build upon what has been accomplished.

Fred Feinstein
Acting General
Counsel April
27, 1998

Case Handling Programs

• ***Impact Analysis:*** *Cases now receive attention consistent with their importance to* the public. Prior to the implementation of Impact Analysis cases were treated on a first come, first served basis. Cases are now classified at initial intake in accord with their impact on the public and thereafter resources and the time frame for the investigation are allotted in accord with the categorization of the case. Impact Analysis has encouraged the use of alternative investigative techniques which ensure quality while saving Agency time and resources.

As the backlog of cases in our regional offices increased in the early and mid-90s and our resources and staffing remained static, it became clear that the Agency had to evaluate whether the case management system in place continued to be responsive to the Agency's mission and the public's needs. That assessment was carefully considered by a committee of field managers and supervisors who recommended a new case management system, called Impact Analysis, which provided a uniform framework for the prioritization of cases across the country and insured that those cases having the greatest

impact upon our customers received the greatest resources to assure the highest quality of case processing. The Impact Analysis system is consistent with the Government Performance and Results Act (GPRA) in that it allows for the measurement of the Agency's effectiveness in handling the most important cases and moves away from the Agency's more traditional approach of measuring effectiveness exclusively based on the numbers of cases processed, regardless of their significance in the labor relations environment.

The Impact Analysis approach is directly related to the two primary purposes of the Act: to resolve questions concerning the representation of employees and to remedy unfair labor practices committed by employers and unions. In furtherance of our mission, the cases that now receive our most immediate attention are those where the alleged unlawful activity is having a demonstrable impact on the public through disruptions of business activities or, if the remedy would significantly affect many employees, or most of the employees in a small workforce. In more concrete terms, under Impact Analysis, a case involving a remedial bargaining order affecting an entire unit of employees, or the systematic abuse by a union of an exclusive hiring hall would command more Agency resources than would a charge involving a limited unilateral change in terms and conditions of employment or a charge involving a claim by an individual regarding his or her union's failure to process an individual grievance.

The Impact Analysis model consists of three categories of cases, with Category III being the cases of the highest impact and Category I the lowest. Since the initial categorization of a case determines the resources and urgency to be given the investigation, it is important that this determination be made as quickly as possible. Cases can be recategorized during the investigative stage if warranted. Generally about 20 percent of unfair labor practice cases fall in Category III, about 45 percent in Category II, and 35 percent in Category I.

Under Impact Analysis, time goals for processing an unfair labor practice charge through investigation and implementation of a Regional determination—by issuance of complaint or dismissal or withdrawal—are different for each category. The time targets are 7, 11 and 15 weeks from the filing of the charge in Category III, II and I cases, respectively. The time targets reflect two

objectives. First, to assure that resources are focused on our most important cases and second to reflect the realities of the workload in the field. The prior time target for all cases was 45 days, regardless of the importance of the case and the resources in the office. This goal was simply not possible to meet for the most important cases and the effect of continuing to work towards an unreachable goal was affecting morale in the field as well as our credibility with the public.

A significant aspect of the Impact Analysis case management system was that it made alternative investigative methods and resources available to the Regions in the investigation of Category II and I cases. While Category III investigations tend to require greater in-person contact with investigators, while in many instances Category II and I cases can be fully investigated through telephone contact or the use of questionnaires.

The Process

In effecting change in an established case management system, it is essential to have those managers, supervisors and employees working under it to be invested in and committed to the new approach. Thus, the process by which the system was developed was almost as important as its product.

Under the aegis of the Agency Partnership Council, a committee of Agency managers and employees was formed to assist in this process. In addition, separate work groups representing each major component of the Agency were also established. Further contributing to the process was our selection in 1995 as the pilot Agency to participate in a 2½ day seminar presented by the Federal Quality Institute, in cooperation with OMB and other agencies, regarding Strategic Planning and Performance Measurement.

Inasmuch as more than 90 percent of the Agency's casehandling work is performed in the field, a Regional Office Work Group consisting of representatives of all levels of supervision and management in the Regions, along with members of G.C. Headquarters staff, took the lead. The Work Group reviewed recently completed Customer Surveys. In addition, through its wide-ranging cumulative experience, informal conversations and a

written survey instrument, it attempted to develop an understanding of the primary requirements for performance measurement from the point of view of the people doing the work in the Regions. Repeatedly the Work Group heard expressed the need for the Agency to achieve meaningful results in the context of ever diminishing resources. This led the work group to conclude that before an effective system of performance measurement could be established, it was necessary to develop an approach to case management and prioritization that conformed to our key objectives and permitted the Agency to address the needs of our customers and stakeholders now and for the future.

In March 1995 the Work Group's Preliminary Report and Recommendation for the establishment of an "Impact Analysis" approach to case prioritization and management was shared with representatives of all levels of Agency management, and with the National Labor Relations Board Union (NLRBU) and NLRB Professional Association, which represent rank and file Agency professionals. During the period from March through early July, comments were received from throughout the Agency, with particular discussion and focus occurring among Regional Office managers. After preliminary review and consideration of these comments, the Work Group, now expanded to include representatives of the NLRBU, met in early August to revisit its original "Impact Analysis" model to address the concerns and suggestions received. Thereafter, a revised report issued in November 1995. A memorandum announcing the initiative issued and was accompanied by full and summary Reports of the Committee of Field and Headquarters personnel on Impact Analysis and an IA Training Manual.

Impact Analysis was implemented over a five month period in 1996. Approximately one-third of the Regions implemented Impact Analysis in January and the remaining Regions started in either April or June. In addition to a detailed guideline memorandum and a training manual, two members of the Impact Analysis Committee (one management representative, one union representative) visited each Regional Office to train the Regional Office personnel on this new case processing system. Subsequent to implementation, a member of the Impact Analysis Committee has been in contact with each Regional Office to assist them with any issues that have arisen under

this new system. The Committee is also beginning to undertake a comprehensive evaluation of Impact Analysis to determine whether it is addressing its primary goals and to determine what, if any, modifications are appropriate.

The Impact Analysis program was recognized by the National Performance Review with a Hammer Award in 1997.

Results

We began measuring overage performance by Impact Analysis Category on a national basis in October 1996. As of October 31, 1996, 20.2 percent of Category III cases were overage (i.e., action had not been completed within time targets), compared to 31.9 percent of Category II cases and 23 percent of Category I cases. By the end of February 1998, the cumulative Category III and II rates for FY 98 had been reduced to 17.6 percent and 26.7 percent, respectively. In contrast, Category I cases have shown an increase in the overage rate to 26.7 percent. This trend is consistent with what the Agency hopes to accomplish under the Impact Analysis case management system, *i.e.*, the Regions are focusing on the more important cases with the most impact on the public and tolerating a higher overage rate for Category I cases.

The results to date indicate that steady progress has been made on Category III cases. We were hopeful that this trend would continue through the remainder of FY 98 and 99. However, the realities of the budget situation, where case handling travel has been seriously reduced require us to re-evaluate our goals. In FY 98, it may be that maintaining the overage levels of FY 97 will demonstrate the continued success of the program. While we look forward to continuing reductions in the backlog of Category II cases, it may be that if the backlogs of Category III and II cases are to be reduced, staff resources must be re-deployed from the handling of Category I cases, in all likelihood increasing the backlog of Category I cases. Such a result would suggest that the Regions have fully implemented Impact Analysis and that resources are appropriately focused on cases with the most impact on the public.

- ***R case reinvention program:*** *Regional Office practices*

were examined to identify ways to conduct representation elections in a more consistent and predictable time frame. Goals were established to put all parties on notice of precisely what would occur when a petition for an election was filed, to conduct the election within a predictable number of days from the filing of a petition and to resolve all post election issues expeditiously. In more than 50% of all cases, elections are now held within 42 days of petition filing and in nearly nine of ten cases elections are held within 56 days.

There is no responsibility the NLRB undertakes that is more important than conducting elections in a fair and regular manner in order to determine whether or not employees wish to be represented by a union. A delay in the resolution of this question increases the likelihood of workplace disruptions. Delay also leads to increased costs, which can be minimized when this critical question is addressed in a prompt, conclusive and fair manner. The effectiveness of the statute is therefore grounded on our ability to swiftly and fairly resolve the fundamental workplace issue of representation.

Prior to the representation case initiatives which are summarized here, the Agency had established performance goals for the field which measured only medians, i.e., the time within which 50% of all cases were processed. For instance, elections in at least 50% of all cases were to be conducted within 50 days of the filing of the petition. If the parties could not resolve all issues by agreement, the median for issuing decisions was 45 days from the date of the filing of the petition. Post election cases were to be resolved in a median of 35 and 95 days of the objection or challenge, respectively, in no-hearing and hearing cases. The time within which elections and pre and post election issues were formally resolved in the remainder of cases was not measured. The time frame for processing those cases that fell outside the median varied widely and at times substantially exceeded the goal established for the median case. The median goal provided no incentive for resolving those cases that fell outside the median within a reasonable period of time. There was no process for identifying the factors which contributed to delays and developing uniform strategies to increase our overall ability to resolve representation questions in a predictable and efficient.

The first step in our reinvention process was that of reemphasizing the critical importance of our work in this area and establishing overall time goals for representation cases. Those goals provided for elections to be held within 6 weeks of the filing date of the petition, with only the most unusual of representation cases resulting in an election being held more than 8 weeks after the filing date. The overall goal established for issuing pre-election decisions was 45 days from the filing date in all but unusually complex cases. Regions were initially given wide latitude to implement those procedures which would assist them in reaching these goals.

In 1994, a Representation Case Study Work Group, comprised primarily of field employees, was established to study ways in which we could improve upon the quality and efficiency of our representation case work. This work group studied representation case procedures, field office practices, other work group recommendations and input received from our customers, stakeholders and employees. Customer survey results disclosed that most respondents were dissatisfied with delays in the resolution of representation cases and supported specific measures designed to expedite the processing of these cases. Labor and management advisory panels had considered ways in which the Agency could improve upon the quality and efficiency of its representation case services. The report issued by the Work Group recommended changes in time goals and representation procedures, evaluated techniques designed to enhance the quality and efficiency of our records and decisions, and identified needs which should be addressed through field-wide training. In FY 1996, a Representation Case Training Committee, comprised primarily of field employees, developed and implemented a training program for all regional employees which was designed to improve the quality of our representation case work.

After fully considering these recommendations and obtaining further input, field wide changes in our representation case procedures were implemented in February, 1996. Many of those procedures were a compendium of regional practices which had proven to be successful. These revised procedures streamlined representation processes. They sought to minimize unnecessary delays and provide increased consistency,

uniformity and predictability in the processing of representation cases. They included provisions for docketing priority, expedited service of documents, prompt communication to the parties of the anticipated dates for hearing and election, consecutive days of hearing, early identification and narrowing of issues and prompt filing of post hearing briefs. Oral approvals and alternative procedures were established to minimize unnecessary delays.

In April 1997, the previously described time goals were specifically incorporated into the field managements' performance appraisal system. Under those standards, at least 50 percent of elections are to be held within 42 days of the filing of the petition; at least seven eighths of elections are to be held within 56 days, and no election is to be held more than 85 days from the filing of the petition, except due to circumstances beyond the Region's control. The time for issuing reports in post-election cases should not exceed 120 days, except in circumstances beyond the Region's control. Information about the factors which contribute to excessive delay in the resolution of pre and post election issues is being collected and will be analyzed.

In December 1997, acting on a survey conducted the previous year, the Representation Cases Best Practices Report issued, summarizing best practices in six areas: initial R case processing, election agreements, hearings, decision writing, elections and post-election. On January 26, 1998, a General Counsel memorandum issued to all Regions, attaching a copy of this report and urging Regions to adopt the practices set forth in the Report. We have instituted a procedure for soliciting, on an annual basis, practices and procedures that could prove useful in representation case processing.

We are currently updating the procedural and substantive representation case handling manuals, which provide guidance to Agency employees and the public on the Agency's procedures for processing representation cases and relevant case law. This update will, in particular, seek to make the information more useful to our employees and customers and improve the quality and promptness of our service. When published the manuals will be available on the Internet.

Results

As a result of these reinvention efforts, representation cases are processed in a more consistent, uniform and predictable manner. Practitioners and parties know what they can expect when a petition is filed and have generally accepted these procedures. Streamlined procedures and field wide training have increased our efficiency and effectiveness, and representation petitions are now being processed within a more predictable and consistent time frame. Before this initiative, in the first quarter of FY 1994, the median time for conducting elections was 50 days and elections were conducted within 75 days in 87.5% of all cases. In FY 1997, the median was reduced to 42 days and elections were conducted within 57 days in 87.5% of all cases. In the area of decisions, the median declined to 37 days and decisions issued within 59 days in 87.5% of cases. Those figures were 45 and 131 days, respectively, in FY 1994. In the post-election area, the time frames for issuing reports in 87.5% of all cases dropped from 63 to 48 in no hearing cases and from 197 to 135 days in hearing cases. All of these dramatic improvements were achieved without reducing the election agreement rate. In fact, the election agreement rate in FY 1997, 85.4%, was higher than the rate in FY 1994, 83.2%.

The following table illustrates the changes in four indicators since our baseline time period of late 1993.

Representation Case Processing Time Improvements, by Percentile

	1st Qtr FY 94	FY 95	FY 96†	FY 97
Initial Elections (days from filing to election):				
Median—days to complete 50% of cases	50	44	44	42
62.5%	53	47	48	43
75%	60	51	52	49
87.5%	75	61	66	57
Regional Director Decisions (days from filing to issuance):				
Median—days to complete 50% of cases	45	42	43	37

62.5%	56	44	47	42
75%	84	50	60	45
87.5%	131	79	87	59
Postelection (days to report, no hearing):				
Median—days to complete 50% of cases	32	27	27	25
62.5%	34	27	27	25
75%	41	36	39	35
87.5%	63	49	54	48
Postelection (days to report, hearing):				
Median—days to complete 50% of cases	89	83	85	71
62.5%	96	83	85	71
75%	121	100	116	95
87.5%	197	146	160	135

In 1997 the Vice President's National Performance Review awarded the Representation Case Study Committee a "Hammer" award for the improvements in performance that resulted from all of these reinvention efforts.

• ***10(j) Program:*** *The goal has been to promote uniform application of NLRA* injunction provisions. A manual was produced and distributed to all field offices; training was conducted, with subsequent refresher sessions. Each Region named a 10(j) coordinator. Cases are now reviewed for 10(j) potential early in investigation. An initial upsurge in 10(j) filings has leveled off. Despite changes, the success rate in terms of settlements and litigated cases has remained unchanged from historical levels.

Section 10(j) of the Act authorizes the Board to seek, and district courts to grant, interim injunctions pending the completion of the Board's administrative processes in

those cases where a respondent might otherwise be able to accomplish its unlawful objective before being brought under legal restraint by a Board order. To insure that the Board's ultimate remedial orders are effective, it is important that we obtain interim relief to preserve or restore the status quo in those cases that present a threat that the passage of time will nullify the Board's final order.

The Agency has had a policy of encouraging the use of §10(j) for many years and some Regional offices have historically used this remedy very effectively. Reviewing this program in March 1994, however, we became concerned that other Regions with similar numbers and types of cases used §10(j) infrequently or not at all. Accordingly, we instituted a §10(j) initiative to assure that all Regional Offices were properly using this remedial tool. In June 1994, we directed all Regions to implement a mechanism for effective identification of potential §10(j) cases. During the Summer of 1994 we trained Regional personnel in the investigation and analysis of issues unique to the question of whether interim relief is "just and proper" in a particular case and we prepared and distributed to all offices a Section 10(j) Manual on investigation and litigation of §10(j) cases.

As a result of this initiative, Regional offices have incorporated consideration of the need for §10(j) relief into their case-processing routine. The quality of Regional memoranda submitting cases to Washington for review regarding the warrant for §10(j) relief has substantially improved. These memoranda (which form the basis of the district court litigation papers) now more consistently reflect a familiarity with §10(j) case law and facility with applying §10(j) analysis to the facts of a particular case. Furthermore, the use of §10(j) has been more evenly distributed among the Regional offices. Every office has had at least one authorization since the initiative was begun in March 1994. At the same time, we have maintained a commendable success rate in litigating these cases (88 percent in the four years following the beginning of the initiative in March 1994).

The results of these efforts have meant effective enforcement of the Act in numerous individual cases. Cases involving employer threats, discharges and other violations in response to employee organizing campaigns

have traditionally accounted for a substantial portion of the §10(j) cases authorized by the Board. Such efforts to "nip in the bud" employee exercise of rights protected under the Act invariably threaten remedial failure because the violations have the immediate effect of intimidating employees from engaging in such activities. By the time the Board orders the employer to cease its unlawful conduct and to reinstate discharged employees, the campaign has withered and is unlikely to resume because the affected employees usually have found other work and decline reinstatement.

During my term, cases involving organizing campaigns accounted for approximately 40 percent of the cases authorized. Among these were injunctions from district courts that had not previously granted such relief: an order from the district court of the District of Columbia against discrimination and other interference with an organizing campaign among employees of a janitorial service contractor and, in the Court of Appeals for the Seventh Circuit and district courts in the Middle District of Florida, the Middle District of North Carolina, and the District of Kansas, the grant of interim remedial bargaining orders where the employers' threats and discharges had precluded the holding of a fair election.

Employer refusals to bargain traditionally account for another substantial portion of the Board's §10(j) caseload. Typical of the problems presented by these types of cases are those where a party which is negotiating for a collective bargaining agreement unilaterally changes working conditions without bargaining or otherwise violates its bargaining obligation during the negotiations. Such violations stymie the bargaining process because they give the offending party an unwarranted advantage at the bargaining table; the other party is faced with the Hobson's Choice to forego bargaining until the violations are remedied—and risk depriving employees of the fruits of collective bargaining they might otherwise gain—or to bargain from the disadvantage of the unlawfully imposed conditions. The problems are exacerbated when the violations cause employees to strike.

As in the past, during this period we have successfully used §10(j) to restore the status quo in such situations so that the violations are removed as a cause of the

strike and effective bargaining can proceed while the case is pending before the Board. Most prominent of these was the injunction issued by the Southern District of New York against the Major League Baseball Owners to rescind unilateral changes they had made regarding players' free agency and salary arbitration rights, where those changes were interfering with the collective bargaining process and prolonging a strike.

We have had similar success in less prominent but equally important cases in which employer violations were interfering with the collective bargaining process. Example of this are employer violations with respect to their conduct of negotiations for a new contract, unlawful withdrawal of recognition and the refusal by successor employers which have hired the predecessor's employees to recognize the representative of those employees. We have also been successful in obtaining a cessation of unlawful bargaining tactics by a union that threatened to cause a strike.

We have continued to review the operation of the §10(j) program with an eye toward making the most effective use of our resources. Thus, in connection with the initial upsurge in authorizations in the first two years of the program (83 authorizations in FY 84 and 104 in FY 95), we evaluated the cases involving organizing campaigns to assess whether the interim relief obtained had an effect that could not be achieved by a Board order in due course. We concluded that if there is no indication that organizing activity is likely to resume in the interim, it may be that §10(j) relief is not necessary. Accordingly, we directed Regional offices to include in their investigation of the propriety of relief in organizing cases a determination of the status of the organizing campaign and the interest of discharged employees in reinstatement.

Similarly, given the high rate of settlement in authorized §10(j) cases, we realized that we can achieve the §10(j) objective of a timely remedy without resort to the §10(j) authorization process simply by scheduling a prompt administrative hearing. In late 1994 we instituted a policy of scheduling expedited administrative hearings in cases where the Region concludes that immediate relief is necessary but settlement is likely upon the initiation of litigation. If the case does not settle at the administrative level, the Region can seek §10(j)

authorization at the conclusion of the administrative trial. The expedited hearing process is also useful in considering whether §10(j) relief is appropriate, where a respondent has not cooperated in the investigation of the unfair labor practice case and we anticipate that substantial defenses will be raised. Resort to an expedited administrative hearing allows us to evaluate the strength of the entire case and make a more reasoned judgment as to the propriety of §10(j) relief. With these refinements of the §10(j) program, the number of cases actually authorized fell to 53 in each of FY 96 and 97. In sum, we have succeeded in implementing §10(j) more consistently and effectively, in a manner that has helped assure greater compliance and enforcement of the Act.

- ***Compliance Program Review:*** *Regional Office procedures for computing,* collecting backpay and obtaining other remedies were reviewed. Guidance was produced, updated; Regions may now use sampling, estimating techniques to simplify backpay computation. Compliance cases now prioritized under Impact Analysis principles.

Achieving compliance with the Board's orders is one of the most important aspects of the Agency's work. An effective compliance program is essential to maintaining the NLRB's credibility as a law enforcement Agency. During the past four years we have undertaken a comprehensive review of our compliance procedures. As elsewhere, the focus has been on the steps we could take to enhance our effectiveness and efficiency in carrying out this vital activity with the available resources.

Reinvention of the Contempt Litigation Branch

The Contempt Litigation Branch has been reorganized to ensure that its casehandling follows "impact analysis" prioritization and that greater emphasis is placed on proactively assisting the Regions generally with their compliance work. With respect to the first, the Branch not only has begun prioritizing, under impact analysis principles, the contempt recommendations that it receives from the Regions, but has also embarked on a program of identifying and isolating appropriate cases for contempt without relying exclusively on referrals from the Regions. This ensures that the Branch can pursue those cases that have the highest potential for effectuating

the Act's policies. The combination of these two approaches has improved the effectiveness of the Branch's operations.

In regard to the second reinvention component, the focus of the Branch's work has been shifted to place greater emphasis on proactively assisting the Regions with their compliance work, particularly during the earlier stages of case processing when cases have a higher potential for achieving full remedial relief. The work of the Branch has also been refocused to address the deficiencies that currently exist in our Regional compliance system, including deficiencies in the development of casehandling strategies and techniques, compliance training and the sharing of information concerning new and innovative compliance tools, among others. In recognition of this shift in emphasis, the branch was renamed the "Contempt Litigation and Compliance Branch." The new name and new responsibilities were announced in a memorandum issued on January 30, 1997.

The Branch now has the following responsibilities:

establishing a "compliance information line" through which the Regions may informally obtain telephonic advice and assistance with respect to compliance matters, as well as sample pleadings and other legal documents;

developing long-term casehandling strategies in connection with certain types of compliance cases (collection, bankruptcy, inability to pay, successor/alter ego/corporate veil piercing and fraudulent conveyance cases);

assisting in ensuring that the Regions are aware of new and innovative compliance tools and current compliance policies, and establishing a system for sharing successful compliance techniques among the Regional offices;

providing the Regional offices with up-to-date training in compliance casehandling;

maintaining an up-to-date compliance handbook in electronic and hardcopy form containing an integrated compliance reference material system; and

reviewing and changing where appropriate the Branch's operating procedures in order to facilitate the Regions' use of the Branch's services.

Through these efforts, the Branch will be able to better equip the Regions, where the vast majority of compliance work is performed, to more effectively and efficiently process this work.

The Process

The Compliance Reinvention Committee, composed of 13 field and headquarters employees with extensive experience in compliance work, was formed in July 1996. The group held a three-day meeting in Washington in September 1996, and held periodic conference calls between July 1996 and January 1997 to examine all aspects of compliance work, and to formulate a comprehensive set of recommendations with respect to how the processing of these cases could be enhanced. These recommendations were then compiled in a written report in early 1997. The report's recommendations were then further considered at a Regional Management Conference in June 1997, and based upon input from that group and from others in the field, were revised and ultimately adopted and disseminated through a series of memoranda issued in February 1998.

The reinvention of Regional compliance work is taking place through the initiatives discussed below:

The Regions are being encouraged to make additional efforts to "front-load" compliance work. Under this approach, the Regions would place greater emphasis on identifying and addressing potential compliance problems during the earliest stages of case processing, rather than deferring such issues until a Board order or court judgment has issued. Shifting attention and resources in this manner will provide for quicker and more effective compliance, and promote settlement and voluntary compliance, thus conserving resources.

The Regions have also been asked to make additional efforts to identify, at the earliest possible opportunity, cases which do not warrant further compliance efforts because of the clear likelihood that compliance will never be achieved. A realistic

assessment in such situations can lead to conservation of limited Agency resources.

Regions are being given authority to employ innovative methods to calculate backpay, such as the use of statistical sampling and other methods of approximation. Through these techniques the Regions will be able to avoid the expenditure of time that would otherwise be required to undertake a precise calculation of backpay, particularly where there are large numbers of discriminatees and/or prolonged backpay periods.

We have also asked Regions to seek, in appropriate cases, an order from the Board requiring the respondent to pay for an independent auditor/accountant selected by the Board to perform the compliance computations, have also encouraged them to use the Agency's subpoena power where necessary to shift to respondents the burden of compiling compliance information.

Regions have been delegated the authority to close, without headquarters clearance, compliance cases where there is no outstanding circuit court judgment and where additional efforts to obtain compliance are not deemed warranted. Where there is an outstanding court judgment against the respondent, headquarters clearance is still required, but may now be accomplished telephonically without the need for a formal written memorandum.

The Regions have also been encouraged, in appropriate cases, to litigate compliance issues during the unfair labor practice proceedings, both with respect to liquidating backpay and other monetary remedies and with respect to pleading entities which appear to have derivative remedial liability. This approach will allow for quicker resolution of compliance issues and more efficient use of Agency resources.

Finally, the Regions are being encouraged to make greater use of formal settlements—which provide for the entry of a Board order and consent to court enforcement—where the charged entity has a history of prior violations of the Act. This is consistent with our goal of dealing with recidivist entities promptly and effectively, so as to limit the need to devote

Agency resources in dealing with further violations.

Application of Impact Analysis to Compliance Work

As of March 1, 1998, the Agency's Impact Analysis prioritization program, which had been in effect since 1996 for unfair labor practice investigations, is being applied to compliance cases. Under this program, the field offices are applying specific, field-wide standards to place compliance cases in one of three categories, in accord with their projected public impact, and are giving higher priority to those cases deemed to have the greater impact. The time standards for completion of compliance actions vary depending on the category to which they are assigned. This approach will help ensure a more systematic approach to the management of compliance work, and will allow the available, and often limited, staff resources to be directed first to those cases with greater impact.

- ***Office of Appeals Reinvention:*** *The Office of Appeals, which reviews Regional* Office dismissals of unfair labor practice charges for potential prosecutorial merit, has been streamlined to reduce layers of review. Work processes were reorganized to more quickly identify and process potential merit cases. Highest priority cases now receive first attention. Case processing times have been reduced, improving service to public.

  The primary function of the Office of Appeals is to review appeals from decisions by Regional Directors not to issue complaints on unfair labor practice charges. The Office handles more than 3,000 appeals per year. In an initial reinvention effort implemented in March 1996, the Office adopted strategies to prioritize the processing of cases of greater impact on the public, with first focus on those cases that were more likely to lead to a finding of merit, which would require returning the case to the Region for issuance of a complaint and hearing, absent settlement.

  These efforts were immediately successful in sharply reducing the time required for a decision on the appeal. The Office instituted a customer service standard providing for decision in most cases within 60 days of the filing of the appeal. As a result of reinvention, the proportion of decisions meeting the 60-day standard

grew from 60 to 81 percent. The median time to process an appeal to a finding of merit was reduced from 99 days to 36 days.

In 1997 the Vice President's National Performance Review awarded the Office of Appeals a "Hammer" award for the improvements in performance that resulted from these reinvention efforts.

Through the first 10 months of FY 1997, the median number of days for issuance of a decision on a sustained appeal fell to about 23 days. However, as a result of continuing attrition among its professional staff (20 percent since 1996) and growing intake, the backlog of unprocessed appeals in the office has grown, causing the median time for issuance of a decision on a sustained appeal to increase to 88 days, still an improvement over the pre-reinvention standard.

The Office has recently continued its reinvention process by changing its procedures to free up supervisory and managerial attorneys to handle cases directly; however, it also has had to alter its customer service standard to 120 days to reflect current and projected staffing shortages.

- ***Other Programs***

Postal Service Agreement

The Agency facilitated the negotiation of an agreement between the United States Postal Service and the American Postal Workers Union, AFL-CIO ("APWU"), for an alternative dispute resolution ("ADR") procedure to be used in cases involving requests for information relevant to bargaining. Before the agreement the union had annually filed several hundred unfair labor practice charges against the Postal Service arising out of such disputes. The ADR agreement created an expedited system for the parties' local, district, area and national representatives to discuss information request disputes, with an emphasis on resolving disputes at the lowest possible level. The agreement requires the parties to exhaust the ADR process before filing an unfair labor practice charge with the Board.

The results have been dramatic: since the agreement took

effect in July 1997, the APWU has not filed a single unfair labor practice charge with a Regional Office involving an information request dispute. Additionally, the Contempt Litigation and Compliance Branch has obtained the parties' agreement to process through the ADR the hundreds of information request cases that were already pending at the Agency at the time the ADR was created, and therefore the Agency will not have to devote any further resources to processing these cases either. The Contempt Litigation and Compliance Branch is currently exploring with the Federal Mediation and Conciliation Service and the parties the possibility of having FMCS personnel provide the parties' representatives training in how to more expeditiously resolve information request disputes.

Deferral of "Collection" Cases

In a memorandum issued in 1995 we announced a policy of deferring to civil court proceedings those cases which involve an allegation that an employer, during the life of a contract, has failed to make contractually-required contributions to benefits funds, such as pension funds, health and welfare funds, vacation funds etc. in mid term. This policy is grounded on the relief available to these institutional charging parties under other forums, and is intended to conserve Agency resources.

Transfer of "portable" work

We have greatly expanded the transfer of portable work such as decision writing and telephonic investigations from a temporarily understaffed or backlogged region to one that can better handle the increased workload or to Headquarters. Savings come from moving work, not people. This has been accomplished by the interregional assistance program or the temporary adjustment of geographical boundaries between Regions. Under the interregional assistance program cases that can be investigated through alternative means, such as questionnaires or telephonic affidavits, are assigned to another Region for investigation. Although in non-merit cases the assisting Region issues the dismissal or obtains the withdrawal, if the assisting Region finds merit to the case, it returns it to the originating Region for issuance of complaint, settlement negotiations, and, if necessary, litigation. This is so because it is almost always more cost effective to try

cases at a location near the situs of the dispute.

The temporary adjustment of geographic boundaries is used when one of two contiguous Regions needs help and the other one can render help. Under this approach we have temporarily assigned all cases in counties that are essentially equidistant from both home offices to the assisting Region. In this situation the case remains with the assisting Region even if merit is found, because the proximity of the Regions enables the assisting Region to litigate the transferred case with no additional cost to the Agency. We anticipate that close to 2,000 cases are being transferred this year pursuant to these programs.

Increased Delegations; Paperwork Reduction

We have delegated significant casehandling and administrative authority to Regional Offices, eliminating requirements for clearance or approval from Washington. These include authority to issue subpoenas, respond to most routine requests for evidence under Agency "housekeeping" rules, close cases; submit bilateral formal settlements to the Board. Complaints and enforcement recommendations are no longer routinely reviewed by Headquarters.

Regions have also been encouraged to exercise prosecutorial discretion in cases that allege isolated or *de minimis* violations by issuing a "merit dismissal" letter, which, while declining prosecution, warns the charged party of the Region's view that a violation has occurred and that Agency action might be taken in the event of a recurrence. Significant delegation has also occurred in the compliance area, as discussed above.

Implementation of the Case Activity Tracking System within the next two years (see below) will permit the elimination of most case activity reports, and will make the submission of remaining reports significantly less burdensome.

Best Practices

In reinventing our work processes our approach has not been to mandate additional procedures and requirements, but to capitalize on the delegation of authority and the expertise which resides in managers in our Regional

Offices. Because of the wide range of delegated authority which Regional Directors exercise, local practices and procedures develop within the Regions, demonstrating creative and successful approaches.

In 1996 a Best Practices Committee was established and charged with the mission of surveying the Regions to learn of the "best practices" in casehandling being utilized across the country. The committee was made up of field managers and supervisors and employee representatives. I subsequently established a second best practices committee to focus on unfair labor practice processing and charged the original committee with representation case processing. The R Case committee report issued in 1997 and the C Case report will issue later this year. In January 1998 a General Counsel memorandum issued to all Regions, attaching a copy of the R Case Committee report and urging Regions to adopt the practices set forth in it. In the meantime, best practices have been disseminated by the Agency's newsletter, *All Aboard*, and by electronic mail bulletin boards.

Rules revisions

Rules and regulations were revised to permit filing by fax and similar reforms to reflect modern business practices. In recognition of the growing use of fax and electronic data transmission, the Rules Revision Committee developed, and the Board adopted, a set of amendments to the Board's Rules and Regulations that allow for the filing of unfair labor practice charges, representation petitions, and objections to elections by facsimile transmission. The amendments also eliminate the requirement for use of certified mail in many cases, saving postage costs, and permit filing and service of documents by overnight courier and other commercially recognized means.

Calendar Call

For a number of years one of our Regional Offices has scheduled unfair labor practice hearings pursuant to the "calendar call" system. This is similar to the system utilized by many Federal and state courts. Commencing in 1995, we conducted a 1-year experiment utilizing a calendar call system for trials in four additional Regional Offices. Thereafter, calendar call was

permanently implemented in these four Regions (two of which have calendar call for only a portion of their trials). Under this system, four or five trials are scheduled to begin on a Monday morning, and all attorneys and witnesses are required to stand ready to commence their cases upon a few hours' notice. Thus, if the first case called settles or takes less than 1 day to hear, the next case in succession immediately is called up for hearing. Although this procedure places some burden upon counsel and other participants, it maximizes the efficiency of the tribunal and allows hearings to be held more promptly.

Other Cost-Saving and Efficiency Initiatives

• ***Closing and Reconfiguring Field and Headquarters Offices:*** *The El Paso, Texas* Resident Office was closed and the D.C. Resident Office was moved into the Headquarters building. Space in 28 field locations was reduced. The 1998-99 planned reductions include 10 regional offices and Headquarters. The current year-end space assignment is expected to be more than 10 percent below the 1994 level—a saving of $2.25 million.

Field

The El Paso Resident Office was closed effective February 3, 1997. Annual cost savings in rent from the closing are approximately $25,800. The retention of an employee as a resident agent, who reports to the Phoenix office, helped to assuage concerns that access by the public in the area to the NLRB would be impaired.

The closing of an office has significant downsides. In most instances such action can affect the speed and effectiveness with which the Act is enforced. In addition, rent and other savings must be balanced against potential additional travel costs.

Because of the uncertain advantages and significant downsides to the closure of field offices, our energies in pursuit of overhead cost savings have been directed at space reduction. Space has been reduced in 28 field offices since 1996, by relocation, reconfiguration or closing, by more than 30,000 square feet—approximately 8 percent—for an annual rental cost saving of $718,000.

Additional reconfigurations are planned in fiscal years 1998 and 1999 in 10 field offices, which will eliminate more than 14,000 square feet of space for an additional annual saving of $417,000.

Headquarters and Judges

The Washington Resident Office (WRO) has been relocated to the Franklin Court Building, where Agency headquarters are located, as a result of the Division of Judges implementing a work-at-home program, allowing the release of more than 3,500 square feet of office space. This yielded a reduction of 4,070 square feet and an annual saving of $127,238. Off-site storage space has been cut by 37 percent for a fiscal year 1996-97 saving of $12,543 and a projected FY 1998 saving of $15,053. Efforts are in progress to release 4,250 square feet of office space within Headquarters, further reducing the Headquarters rental bill approximately $145,000.

In addition, the Division of Judges' work-at-home program has allowed the Agency to reduce space in their Judges' Atlanta and San Francisco offices. The total annual projected savings for the Division of Judges is $95,980.

- ***Streamlining of supervision:*** *In the Regional Offices and in the General Counsel's* Headquarters divisions layers of review have been reduced, decisionmaking has been delegated to the lowest practicable level, and there has been greater utilization of supervisory staff flexibly to perform direct casehandling. The ratio of line employees to supervisors has increased. Field office supervisory positions have been reduced 20 percent.

  Another way we have attempted to reconfigure the Regional Offices is to delayer the supervisory-managerial structure in the field. While we have maintained the basic management structure of Regional Director (RD), Regional Attorney (RA) and Assistant to the Regional Director (ARD) in all of our Regional Offices (except Puerto Rico), since 1994 in most Regions the responsibilities of the RA and ARD have changed substantially. Thus, both RAs and ARDs have taken on direct supervisory responsibilities in addition to their management duties. Similarly, supervisors now have substantial direct casehandling responsibilities. We are moving toward a model where RAs and ARDs either supervise

small teams or supervise a distinct segment of work that can come directly to them (rather than through a supervisor).

No longer are supervisory or managerial vacancies filled automatically as positions become available. Each vacancy is studied and assessed in conjunction with the operating needs of the particular office to determine if it is absolutely necessary to fill the position. Alternative measures are considered such as redesigning the supervisory structure of the office or reviewing the work assignment pattern.

In the past 4 years the field has undergone a substantial decrease in the number of supervisors, in both absolute and relative terms. Thus, in June 1994 there were a total of 155 supervisors in the field supervising 710 professional employees, or a ratio of supervisors to employees of 1:4.6; in June 1997 there were 123 supervisors working with 743 employees, a ratio of 1:6.0. The change is even greater if one takes into account the fact that supervisors now spend substantial time performing "line" work.

- ***Reduction of investigative travel costs:*** *Parties who file ULP charges and are* situated within a 120-mile radius of a field office are required to come to that office to provide their evidence. Use of affidavits taken by telephone and questionnaires or requests for statements of facts have been increased. Cases are clustered so that multiple cases can be handled on a single trip.

  Casehandling travel in the field is a significant Agency expense item. Since 1996 we have endeavored to reduce field case handling travel. Together with requiring charging parties within 120 miles of the field office to come to that office to present witnesses and evidence, and encouraging charged parties to do so, the implementation of the Impact Analysis program, including alternative investigative techniques that obviate the need for field travel, has reduced field travel expenditures. In FY 1997 the Agency spent $1,313,600 on casehandling travel in the field, compared to $1,901,868 in FY 1990, a year with fairly comparable case intake. Thus far in FY 1998 spending for casehandling travel is at an annual level of $815,000.

Additional savings have been realized by our ability, resulting from less travel, to reduce the number of leased automobiles stationed at field offices, thereby saving both the costs of the leases and of parking space rental. We have reduced the cost of GSA leased cars nationwide from $220,543 in FY 1996 to $193,000 in FY 1998. Parking costs to the Agency have been reduced from $285,822 in FY 1996 to $234,449 in 1997. A further reduction is anticipated during FY 98 with the elimination of another 30 leased car parking spaces, including executive parking.

- ***Use of resident agents*** *working out of their homes in cities where there is no field* office but where there is steady casehandling activity.

  Over the years the Agency has located field offices throughout the country, in centers of case intake, to provide prompt response times to workplace unrest with the greatest possible economy to the taxpayer. Technological advances have made it possible for these twin aims of speed and economy to be met by stationing an agent in a location distant from existing offices and near a pocket of regular intake. The "resident agent" works out of his or her home, obviating the need for Agency-provided office space. Agency-supplied computers and related equipment enable the agent to communicate with his or her Regional Office and with the parties, and to conduct necessary legal research and other business.

  Resident agents have worked with great success in Salt Lake City, Utah; Monterey, California; El Paso, Texas (since the closure of the Resident Office), and Providence, Rhode Island. Resident agents working on a per-hour basis have also been stationed in northern California and in Provo, Utah. Further examples under consideration include the Fresno, California area, for which the Oakland Regional Office currently spends about $1,000 per month on travel, and Montana, where the 100 cases filed each year cost the Agency approximately $20,000 in travel from either Denver or Seattle. Additional sites for resident agents are also being examined. And, as discussed above, the closing of resident office locations is facilitated by the ability to convert regular field agents to resident agents.

- ***Streamlining Oversight and Administrative Service to Regional Offices*** *by* downsizing, promotion of consultative management, combining of branches, reduction of internal regulations, elimination of dupicated functions.

Division of Operations-Management

The Division of Operations-Management serves as the management arm of the Office of the General Counsel for the Agency's 51 Regional and satellite offices. The Division ensures Regional Office conformity with General Counsel case handling and administrative policies and develops and implements programs and initiatives governing their effective administration.

The Division has downsized significantly in the last several years. At the beginning of Fiscal Year 1993, the authorized Division of Operations-Management staff numbered 32: 20 professionals and 12 clericals organized in five administrative districts. The Division currently operates with four districts—down from six in the early 1990's—with 16 professionals and 7 support staff engaged in Regional Office oversight.

The managerial oversight of the Regional Offices by the Division of Operations-Management now focuses on case management, General Counsel initiatives, working with Regional Offices on personnel and budgetary issues, and identifying and sharing best practices. This includes ongoing review of Regional work, telephonic discussions with Regional Directors and top managers, and direct review of case files. Site visits, once a staple of oversight of Regional Offices, have fallen prey to budgetary limitations. A cooperative problem solving mode between headquarters and field management, rather than the more traditional line-supervisory relationship, is part of the best practices environment.

Division of Administration

Over the last four fiscal years the Division of Administration (DofA) has reduced its staff by 11.5 percent. Since the high-water mark in the early 80's, DofA has downsized by 130 employees.

DofA has eliminated two assistant branch chief positions in its Procurement and Facilities Branch; reorganized the

Finance Branch and eliminated three supervisory positions; and merged two branches into one (the Library and Administrative Services Branch), eliminating a GS-15 position and four supervisory positions in the process. In addition, DofA has converted several positions that were designated as "supervisory," to "nonsupervisory" status.

DofA has capitalized on new technology to assist in streamlining its operations. For instance, in the Case Records Unit, the NLRB's formal case files have been bar-coded to allow for speedy access by users and easy tracking of case files. DofA has also been participating for the last several years in an interagency pilot project, "Employee Express," which permits employees to access their own personnel data to make changes to selected data elements, i.e., Thrift Savings Plan contributions, Federal tax withholdings, address changes, etc.

DofA reviewed its internal document clearance procedures to reduce the volume of documents requiring the Director's review and/or signature, resulting in delegation of authority in several operational areas. A review of DofA's agencywide administrative regulations was undertaken, resulting in a 53% reduction.

Operations-Administration Overlap

The Division of Operations-Management has transferred a number of tasks to the Division of Administration where it appeared that there was some duplication of effort between the two divisions. This transfer of work includes work in the areas of personnel and Information Technology, and training.

- ***Other Programs***

Financial Management Improvements

The Finance Branch has taken steps to improve the Regional Offices' ability to manage their funds and has assisted in the compliance area by facilitating complex backpay distributions, and automated travel accounting. These initiatives included a revamping of the Regional Office Budgeting System (ROBS), which tracks field office spending on case handling, to make it more user-friendly

and compatible with the Agency's accounting system. In the compliance area, new spreadsheets and formulas were developed to assist in calculating complex backpay distributions. Agency travelers now find it easier to complete a travel voucher by using the Travel Manager Plus software.

In accordance with the Debt Collection Improvement Act of 1996, the Agency is now paying employees, witnesses, and vendors through electronic fund transfers rather than issuing them a check or distributing cash. And, pursuant to regulations issued last year, we are now able to use tax refund and administrative offset to collect delinquent judgments for backpay and other monetary remedies.

Interpreter Costs

Agency outlays for interpreter/translator services approximate $160,000 per year. We have sought to reduce our interpreter/translator costs in several ways. For example, in FY 1997, fully 25% of new professional hires were bilingual in Spanish. In addition, we are working to establish a roster of court certified translators in major cities whose hourly rates compare favorably with the rates we are currently paying to interpreter companies in those locations.

Miscellaneous reductions in equipment, supplies

Agency expenditures for subscriptions and books have been dramatically reduced. Online legal research has been increasingly used in place of hard copy material. Most internally generated research material is now available electronically in Headquarters and increasingly in the field through the use of CDs and the development of a Wide Area Network.

We have been aggressive in our efforts to reduce the number of telephone lines in our offices. From FY 1996 to date we have removed 142 lines at an annual savings of approximately $53,000.

A number of Regional Offices are in locations with a sizable Federal Government presence. In many of these locations consortiums of Federal entities have formed cooperative ventures, called CASUs, to provide commonly required services such as printing/duplicating and mail

services, child care, warehousing, messenger and porter services, and procurement. We are actively exploring the expanded use of CASU services around the country.

Internal Labor-Management Relations and Other Personnel Initiatives

- ***Partnership Formation***

In April 1994 Agency management and union officials, after extensive deliberations, signed a Partnership Agreement. The parties to the agreement recognized that in designing and implementing the comprehensive changes needed to reform Government, it is necessary that the culture of Federal labor-management relations change so that managers and employees' elected-union representatives work together as partners.

The Partnership Agreement provided that for the first eight months, meetings would be held on a bimonthly basis for three days' duration. All matters that pertain to NLRB reinvention initiatives and to achieving the National Performance Review goal of making the Agency work better and at less cost were considered to be appropriate for the partnership. The partnership has met regularly since its incepton. Of necessity, due to budgetary considerations those “meetings” recently have been by telephone rather than face to face. The partnership process has begun to help reduce conflict and increase employees’ and management's understanding of each others' concerns. Through the partnership other committees have been established to study the potential for further streamlining in the field offices and clerical restructuring.

The partnership has been confronted with many budgetary issues and these issues have challenged the ability of the partnership to reach consensus on many subjects. Overall, the partnership process has been a productive one, which has improved the Agency’s relationships with its employees’ bargaining representatives.

- ***Improved Consultation with Management***

We have worked hard to establish better communications

with our supervisors and managers. The role of the existing Field Managers' Association was enhanced and has become an important participant in General Counsel initiatives to improve operations.

Teleconferences are conducted on a biweekly basis between headquarters managers in the Division of Operations-Management and representatives of field managers and supervisors (Field Managers Association). Any participant can place an item on the agenda. The teleconferences provide a forum for the exchange of ideas on a full range of subjects including, *inter alia*, casehandling, labor relations issues, personnel matters, training and budget. In addition, a monthly teleconference is conducted with the Regional Directors Committee in which I participate on a regular basis.

In addition, the General Counsel's office issues an electronic mail bulletin on a regular basis apprising all field managers and supervisors of developments of particular interest to them.

- ***Support Staff Issues***

Since 1994 the number of support staff employees in the field has declined from 452 to 406—a reduction of nearly 13 percent. The number in Headquarters has declined from 210 to 174. A number of initiatives have been undertaken to address issues involving the changing role of support staff in an evolving work environment, and seek to determine how the NLRB can ensure the most effective utilization of the skills of all employees who occupy these positions.

At Headquarters, two new Computer Assistant positions have been created and filled by clerical employees. The Computer Assistants serve as trouble shooters, help train staff on new programs and assist staff members with their computer needs. In addition two Paralegal Assistant bridge positions have been established and filled. Additional recommendations remain under active consideration.

An additional committee was established to study the structure and grading of field support staff and issues of upward mobility and job restructuring. Agreement was reached on the establishment of a field bridge program

for computer specialists to give selected employees an opportunity to qualify for careers as computer specialists. This program is intended to meet some of the immediate training needs of Regional Offices and to train current support staff employees to advance to the newly created computer specialist positions. Trainee positions were posted at grades 5, 6 and 7 in several Regional Offices. Upon successful completion of individualized training programs, these employees may be promoted or reassigned as computer specialists. The committee is studying the upgrade of the Compliance Assistant position and the establishment of paraprofessional positions.

- ***Flexible Workplace***

To ensure that the Agency was making maximum utilization of all family-friendly policies and programs, a Flexible Workplace Committee has studied ways to assist employees in balancing their work and family needs. Most headquarters offices have experimented with, or are currently implementing, some facet of alternative work schedules, part-time employment or job sharing arrangements.

Informed by the work of the committee, the Agency has established a Work at Home program and is currently experimenting with a 4-10 program in the field. The Work at Home program has been incorporated into the collective bargaining agreement covering field office professional employees and provides for the availability of work at home for professionals: (1) because of a temporary medical need; (2) in order to work on a discrete portable project for a temporary allotment of time; or (3) on a regularly scheduled basis. The availability of this program enhances the morale of the employees, particularly those with significant commutes to work. We are evaluating the impact on productivity. The 4-10 program is a pilot program in which 4 regions are participating. The Agency intends to monitor this program and analyze the feedback from participating regions prior to establishment of a permanent program.

Offices in headquarters have experimented with a variety of flexible work arrangements. For example, the Division of Advice is experimenting with the use of telecommuting by supervisory attorneys to reduce commuting and free up

time for family, educational, and community activities. Consideration is being given to expanding the program to line attorneys. The supervisors participating in the experiment have home computer links to legal research databases and are accessible by telephone during the normal business day. Thus, the supervisors can research, write and edit the cases that they independently handle and participate in telephone conversations with Division staff and management from their homes. The supervisors use their home workdays predominantly to write and edit complex legal materials without frequent interruptions. There has been no change in the responsibilities of the supervisors, who are expected to accommodate their schedules to attend meetings and fulfill other responsibilities on their scheduled home days.

- ***Revival of Newsletter for Improved Communications***

After a 13-year hiatus, the Agency in 1994 resumed the publication of an in-house newsletter. The newsletter, named *All Aboard* and published 10 times a year, disseminates ideas and information about our "best practices," shares new ideas and approaches to Agency work, promotes better understanding of what is happening throughout the Agency, and features special recognition of Agency employees. With guidance from the nine-member editorial board and administrative support provided by the Division of Administration, *All Aboard* has evolved into an effective medium of communications throughout the NLRB.

- ***Coordination of Labor Relations***

With the development of the Partnership and the significantly expanded role of our unions in the reinvention process, it became increasingly apparent that there was a need to better coordinate management's labor-relations responsibilities, particularly with respect to the field. To accomplish this objective, we have restructured the labor-relations aspect of our management function. In May 1997 an Assistant to the General Counsel for Labor Relations was appointed. This assistant reports directly to the General Counsel’s office, advising me and senior managers on field labor relations issues, provides a single source of information for these issues, and has greatly improved our

communications to managers in the field. The Assistant to the General Counsel and the Labor Relations Officer confer on a daily basis to ensure consistency of approach to labor relations matters between Headquarters and the field.

- ***Alternative Dispute Resolution***

In June 1997 the Chairman and I issued a statement of commitment to the use ADR to resolve disputes between the Agency and its employees and labor organizations. Responsibility for developing an internal ADR program was delegated to the Partnership. In late FY 1997, the Partnership established an ADR Committee charged with developing an ADR program for resolving internal Agency workplace disputes. The committee has begun to develop a pilot program to use ADR in EEO disputes. It is expected that the assistance of a neutral third party at an early stage of the process will lead to quicker and less costly resolution of disputes.

- ***Buyouts/Early outs***

In furtherance of downsizing to meet restructuring targets, the NLRB conducted two buyout programs under the Federal Workforce Restructuring Act. The first, in April 1994, was offered to Headquarters employees in grades 13 through 15 in order to reduce staffing in overstaffed units. The second round, held later in 1994, also was limited to Headquarters staff in grades 15 and below as well as clerical staff in Division of Judges offices in grades 12 and below. Twenty employees received buyouts. In addition we have offered an early-out retirement program each year since 1994. Eighty-one employees have taken early retirement since 1994.

- ***Performance Appraisal Streamlining***

Appraisals of field employees have been significantly streamlined. Narratives are limited to significant assignments. Detailed case logs are no longer required for most employees. Ratings for suitability for higher level positions have been eliminated. Expert level reclassifications have been eliminated and the authority to promote to the newly established journeyman level has

been delegated to the Regional Directors.

Increasing the Use of Information Technology (IT) to Facilitate Casehandling and Management

Substantial progress has been made in the development and use of Information Technology (IT) to improve the quality of our work, increase public access to information about what we're doing, and save costs. Computerized word processing, quantitative analysis and electronic communication have permeated the Agency's culture. In-house legal research databases are replacing commercial services, saving costs. Litigation support software enhances efficiency of brief writing, decision writing. Universal case tracking database will improve management and avoid the "Year 2000" problem.

IT is making a critical difference in these areas:

- ***Web Site to Enhance Availability of Information to Public:*** On March 31, 1997, the Agency launched a new and expanded Web Site. The Internet address is **http://www.nlrb.gov**. Information available to the public through the Web Site includes: an Agency fact sheet; a Help Desk, which assists users in filing unfair labor practice charges or petitions for election or determining if the NLRB has jurisdiction over their workplace issue; the Agency's organizational structure; a weekly summary of NLRB cases; press releases; public notices; NLRB decisions and orders; NLRB Rules and Regulations; and Agency publications and manuals. The web site provides easy access to the public to materials mandated by electronic FOIA. Internet technology will also enhance communication within the Agency.

- ***Information Sharing***: The implementation of electronic mail has facilitated sharing of information throughout the Agency. Many key communications between headquarters and the field are conducted through E-mail, saving time and money by avoiding the use of fax and mail service. Numerous parties can be contacted in a single transmission. Drafts written in one office can be transmitted to another in electronic form for immediate incorporation into other documents. Regional Offices submit proposed orders to the Board in summary judgment cases, eliminating need for retyping.

• ***Legal Research***: We have developed internal electronic databases of Board decisions and other internally created documents, which can be searched and copied quickly and effectively. There is less need for bound volumes and other hard-copy versions of documents. Copying and shipping costs are avoided and materials are available sooner.

• ***Litigation Support***: We have provided transcript search software that enables employees to organize and search transcripts of hearings to locate relevant evidence. Transcript excerpts can then easily be inserted into new written product. Future efforts in this area will include document imaging, thus creating the "electronic case file."

• ***Word Processing***: We have continually upgraded to provide the latest in what is probably the most common use of information technology. Uses include mail merge for letters being sent to multiple parties and creation of "templates" using boilerplate language for commonly used documents such as docketing letters, dismissal letters, complaints, DDEs, etc.

• ***Data Analysis***: Upgrades of spreadsheet and database software have greatly simplified backpay computation and related compliance issues. Data can be imported directly from respondents' payroll records, eliminating need for rekeying and reducing errors.

• ***Budget Management***: Development and refinement of our own Agency software programs have aided in managing the Agency's budget and monitoring and controlling all spending. Spending on all programs can be closely analyzed on a daily and weekly basis.

• ***Payroll***: We have implemented a system to transmit time and attendance information to the National Finance Center so that all agencies employees are paid promptly and correctly. Backpay disbursement data is electronically sent to Treasury to speed distribution to claimants.

• ***Case Tracking***: A major software development project, the Case Activity Tracking System (CATS), which is nearing completion of the development phase and is beginning deployment, will permit easy, universal retrieval of case information. CATS will:

♦ permit managers in all divisions to generate reports that are needed to manage their case loads;

♦ improve monitoring of repeat conduct by employers and unions and linking of related cases. Regional Offices will have comprehensive information about related charges or decisions involving the same respondent, permitting targeting of resources to repeat violators and enhancing our effectiveness in enforcing the Act;

♦ enable response to FOIA requests, Congressional inquiries and other public inquiries faster and at less cost;

♦ eliminate duplicate data entry; and

♦ avoid the "Year 2000" problem in case tracking data.

Strategic Planning Under the Government Performance and Results Act (GPRA)

The initiatives described in this Report were undertaken with the principles of GPRA very much in mind. The Government Performance and Results Act (GPRA) requires Agencies to evaluate their performance in terms of outcomes

and customer satisfaction. The goals, principles and methods of GPRA informed each of the efforts to improve operations and reduce costs.

As a law enforcement agency the NLRB has a challenging task in defining and evaluating "customer satisfaction." Unfair labor practice allegations by their very nature are adversarial and reflect the existence of a labor dispute. Although representation cases are not adversarial in the traditional sense, the stakes are high and the parties usually do not share common goals as to the outcome. Accordingly, enforcement of the Act inevitably results in some disappointment for the non-prevailing party.

Despite the fact that law enforcement agencies may not fit into the GPRA model as easily as other federal agencies, a strategic plan has been developed which sets clear goals for the Agency as well as objectives, strategies and performance measures with which to determine whether we are meeting our goals. The Agency's 1998-2002 strategic plan continues the work started we have undertaken. We are committed to developing baseline data by which we can evaluate the progress of the representation case initiatives, the impact analysis case management system and the prosecution and remedying of unfair labor practices. In accord with these goals we have committed to developing a highly trained workforce responsive to the need to provide high quality service to the public and to fully integrate our information technology system into the work environment in a manner which will increase our ability to provide information to the public and meet agency core mission functions and goals.

The numerous initiatives set forth in this Report have been incorporated into the strategic plan and will be continuously evaluated with an eye toward full achievement of the Agency's goals.